

REMARKS

The present Amendment is in response to the Office Action mailed October 22, 2004, in the above-identified application.

In the Office Action, the Examiner rejected claim 12 under 35 U.S.C. § 112, second paragraph, as being indefinite. In response, Applicants have amended claim 12 to depend from claim 11, thereby providing an antecedent basis for the terminology "the anterior flange". In view of the above-noted amendment, Applicants respectfully assert that claim 12 now satisfies the requirements of 35 U.S.C. § 112, second paragraph, and is otherwise allowable.

The Examiner objected to claim 3 as having minor informalities. In response, Applicants note that claim 3 has been cancelled, thereby obviating the objection.

The Examiner rejected claims 1-10 and 14-19 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2004/0133281 to Khandkar *et al.* In response, Applicants respectfully assert that claim 1 is unanticipated by Khandkar because the cited reference does not include the limitations recited in amended claim 1 including a first member having "a first articulating surface, the entirety of the first articulating surface being a single saddle surface that is defined by a concave arc having a substantially constant radius of curvature A about a first axis perpendicular to an anterior-posterior plane of the spinal column, and a convex arc having a substantially constant radius of curvature B about a first axis perpendicular to a lateral plane of the spinal column." Claim 1 is also anticipated because Khandkar does not disclose a second member including "a second articulating surface, the entirety of the second articulating surface being a single saddle surface that is defined by a convex arc having a substantially constant radius of curvature C about a second axis perpendicular to the anterior-posterior plane of the spinal column, and a concave arc having a substantially constant radius of curvature D about a second axis perpendicular to the lateral plane of the spinal column, said constant radius of curvature A being greater than said constant radius of curvature C and said constant radius of curvature B being less than said constant radius of curvature D."

For the above reasons, claim 1 is unanticipated by Khandkar and is otherwise allowable. Claims 4, 5, 8, 9, and 14-19 are unanticipated, *inter alia*, by virtue of their dependence from claim 1.

The Examiner rejected claims 1-10 and 15-19 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2004/0024462 to Ferree *et al.* In response to the

rejection, Applicants respectfully assert that claim 1 is unanticipated by the Ferree '462 publication because the cited reference neither discloses nor suggests the limitations recited in claim 1 including the limitation of the "constant radius of curvature A being greater than said constant radius of curvature C and said constant radius of curvature B being less than said constant radius of curvature D."

Claims 4, 5, 8, 9, and 15-19 are unanticipated, *inter alia*, by virtue of their dependence from claim 1, which is unanticipated for the reasons set forth above.

The Examiner rejected claims 11-13 under 35 U.S.C. § 103(a) as being unpatentable over Khandkar in view of U.S. Patent No. 6,228,118 to Gordon. The Examiner has cited the Gordon reference as teaching attachment flanges on vertebral implants. In response, Applicants respectfully assert that Gordon does not overcome the deficiencies noted above in Khandkar. As such, claims 11-13 are unobvious over Khandkar and Gordon by virtue of their dependence from claim 1, which is patentable over Khandkar and Gordon for the reasons set forth above.

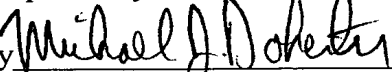
As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 13, 2005

Respectfully submitted,

By 

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